



**MEMORANDUM**

**DATE:** January 15, 2010  
**TO:** Montgomery County Planning Board  
**VIA:** Mark Pfefferle, Acting Chief, Environmental Planning *MP*  
**FROM:** Josh Penn, Senior Planner, Environmental Planning *JP*  
**REVIEW TYPE:** Forest Conservation Plan for Mandatory Referral  
**PLAN NAME:** Frederick Road (MD355)/Brink Road Intersection Improvements  
**PLAN NUMBER:** MR2009802  
**PLAN TYPE:** Forest Conservation Plan  
**REVIEW BASIS:** Forest Conservation Regulations, Section 113.A.(2), Regulation No. 1-01AM (COMCOR) 18-01AM  
**LOCATION:** Intersection of Frederick Road (MD355) and Brink Road in Germantown  
**APPLICANT:** Artery-Clarksburg Skylark, LLC and Elm Street Development-Clarksburg Village, LLC  
**ATTORNEY:** N/A  
**HEARING DATE:** January 28, 2010

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**STAFF RECOMMENDATION:** Staff recommends approval of a Final Forest Conservation Plan with conditions.

**PROJECT DESCRIPTION**

Preliminary plan of subdivision number 120020330, requires the developer to make road improvements to the intersection of Brink Road and MD 355 (Frederick Road) in Clarksburg. More specifically, Artery-Clarksburg Skylark, LLC and Elm Street Development-Clarksburg Village, LLC is required to re-align and widen the intersection to provide a safe and efficient intersection. The project requires a mandatory referral because the project was an off-site condition of a preliminary plan and the details were never reviewed by the Planning Board. The widening, extension, relocation, narrowing, vacation, or change of use of any road, park, or public way or ground is subject to Mandatory Referral review. This is a project relocating and widening a roadway on public lands, both County Right-of-Way (ROW) and park land.

**DISCUSSION**

**Environmental Guidelines**

Environmental Planning staff approved a Natural Resource Inventory/Forest Stand

Delineation (NRI/FSD) (#420081520) on September 5, 2008. By their nature, roadway projects are linear and therefore the net tract area is considered equal to the Limits of Disturbance (LOD). The NRI/FSD shows detailed information for the LOD plus 50 feet outside of the LOD. The net tract area for the portion of the project covered by this forest conservation plan is 2.31 acres. The project contains Glenville silt loam (5B) and Occoquan loam (17B and 17 C) soil types and contains slopes of all types including some steep slopes on the southwest side of the intersection. However, the majority of the project is on flat level ground adjacent the existing MD 355 and Brink Road and the corresponding right-of-way.

The project is within the Little Seneca Creek watershed; a Use IV-P watershed. The Countywide Stream Protection Strategy (CSPS) rates streams in this watershed as Good. Montgomery County Department of Permitting Services (DPS) has determined the project is not subject to a Water Quality Plan or a Water Quality Inventory, and has approved a Stormwater Management Concept in a letter dated November 24, 2008.



**Figure 1: 2008 Aerial Photograph of MD 355 and Brink Road Intersection**

### **Forest Conservation**

As part of a preliminary plan condition for Greenway Village (#12002033), Artery-Clarksburg Skylark, LLC and Elm Street Development-Clarksburg Village, LLC were required to make roadway improvements, re-alignment and widening, to the intersection of Brink Road and MD 355 (Frederick Road). Since this project is not a county CIP roadway project, it was not eligible for an exemption under 22A-5(e) of the Montgomery County Code and therefore is subject to Forest Conservation Plan (FCP) requirements.

This project proposes to remove 0.63 acres of existing forest which generates a 0.97 acre planting requirement. The proposed plan clears all forest within the net tract area. The applicant proposes to meet this requirement by using the off-site Stoney Springs Forest Conservation Bank. EP staff supports the applicant's proposal to meet the planting requirement off-site because the project is linear, and only the area within the LOD is considered within the net tract area or on-site. The LOD for this project is mostly within the County Right-of-Way. Trees cannot be planted in the public ROW for this project at a sufficient density to meet planting requirements. Additionally, this area maybe required for future maintenance and expansion of the roadway. The area for this project not within the ROW or parkland is privately owned and the applicant will need to consult with the property owners prior to the project beginning.

In addition to this FCP it was necessary to amend the FCP for Ridge Road Park (PP1997005). The Ridge Road Park FCP amendment was approved at a staff level because it did not require a hearing with the Planning Board, because the original FCP was approved at the staff level.

The applicant is proposing to remove 3 trees 30 inches diameter at breast height (DBH) and greater, all of which are within the ROW. The trees include a 35" DBH pin oak, 43" DBH red maple, and a 49" DBH red maple. Since the project is subject to a forest conservation plan and it is proposing to remove trees 30 inches and greater DBH, the applicant is required to obtain approval of a variance to remove the trees.

### **Forest Conservation Variance**

On October 1, 2009, Maryland State Senate Bill 666 (SB 666) became law statewide and mandated new criteria to be incorporated into all local forest conservation laws. Bill 666 identifies certain individual trees as high priority for protection. If a forest conservation plan cannot be altered to protect these individuals, the applicant is required to submit a variance to remove trees.

In general, the variance provision of Bill 666 applies to: all trees 30" DBH and greater; trees that are 75% the diameter of the county champion for that species; and rare, threatened and endangered species. Since this project did not obtain approval of a Preliminary Forest Conservation Plan prior to October 1, 2009 and the applicant is proposing to remove three trees greater than 30 inches DBH, a variance is required.

The applicant has requested a variance to remove three specimen trees as part of this FCP, which include a 35" DBH pin oak, 43" DBH red maple, and a 49" DBH red maple. All 3 specimen trees to be removed are not within forest, but are part of a hedgerow.

Montgomery County Code 22A (Forest Conservation Law (FCL)) Section 22A-21(c) requires the Planning Board to refer a copy of each request to the County Arborist in the Montgomery County Department of Environmental Protection and other appropriate officials or agencies for a written recommendation prior to acting on the request. The variance request was referred to the Montgomery County Arborist on January 7, 2010.

The County Arborist has elected not to review the variance request in the letter dated January 11, 2010 (see Attachment B).

Section 22A-21(e) of the County code states that the Planning Board must make findings that the applicant has met all requirements of this section before granting a variance. FCL Sect. 22A-21(d) states that a variance must *not* be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

### **Findings**

1. *Will confer on the applicant a special privilege that would be denied to other applicants.*

The requested variance will not confer on the applicant any special privileges that would be denied to other applicants. Furthermore, unlike a typical subdivision or other development project, this roadway project has a limited, narrow right-of-way, and it is not possible to eliminate features, requirements, relocate the proposed activity since it is an improvement to an existing roadway and must meet the current county guidelines. None of the trees proposed for removal are champion trees or 75% of the DBH of the state champion tree for that species. The circumstances related to this variance are not unique or avoidable, except by denying development. Therefore, staff believes that is not a special privilege that would be denied to other applicants.

2. *Is based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the applicant. The requested variance is based on a master planned roadway and has been deemed a necessary public improvement.

3. *Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

The requested variance is a result of the proposed roadway design and not as a result of land or building use on a neighboring property.

4. *Will violate State water quality standards or cause measurable degradation in water quality.*

The requested variance will not violate State water quality standards or cause measurable degradation in water quality.

## **SUMMARY**

Staff recommends approval of a Final Forest Conservation Plan.

## **Attachments:**

1. Written request from applicant for a variance request
2. County Arborist's response to the variance request



1/7/10

Mark Pfefferle  
M-NCPPC, Environmental Planning  
8787 Georgia Avenue  
Silver Spring, MD 20910

**Re: *Brink Road & MD Route 355 Roadway Improvements (ADC Book Map 4928-K-6)*  
*Forest Conservation Plan, Request for Variance (Revised)***

Mark:

Josh Penn called and sent an e-mail on 1/6/10 to notify our client (Nooshin Amipour, The Artery Group, LLC) that a "Request for Variance" is required for 30-inch diameter or larger, specimen trees proposed to be cleared for the upcoming roadway improvements at the intersection of Brink Road and Maryland Route 355.

Mr. Penn is currently performing a review of Brink Road/MD 355 forest conservation plan and said that we need to address this issue ASAP to maintain upcoming Planning Board dates. The NRI/FSD for that plan has been approved. The NRI/FSD and FCP has also been approved for the abutting Ridge Road Park (both attached for your reference). Mr. Penn asked that I send this correspondence directly to you rather than the County Arborist to facilitate review and approval.

The plan identifies that twelve specimen trees #1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13 will be felled.

The variance request requires that we answer the four following questions:

*Describe the special conditions peculiar to the property, which would cause unwarranted hardship.*

The roadway intersection improvement is a Montgomery County requirement of Preliminary Plan approval for the Greenway and Clarksburg Village projects.

*Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas.*

The angled road alignment in its present condition has been deemed hazardous, with numerous records of accidents at this rural intersection. The proposed perpendicular alignment greatly improves the intersection and provides for adequate lines-of-sight.

*Verify that the state water quality standards will not be avoided or that measurable degradation in water quality will not occur as a result of granting the variance.*

The impervious footprint of the intersection will not be increased, just realigned. The nearest waterway is well down-slope to the north along Route 355, which is an unnamed headwater stream channel of Little Seneca Creek. Appropriate erosion and sediment control practices will in-force during construction. Post-construction side slopes will be stabilized.

*Provide any other information appropriate to support the request.*

I've attached a copy of the *Planning Board Opinion, Preliminary Plan 1-02033A* dated 11/7/02. Please reference page 2, item III-C, which elaborates on the roadway requirements.

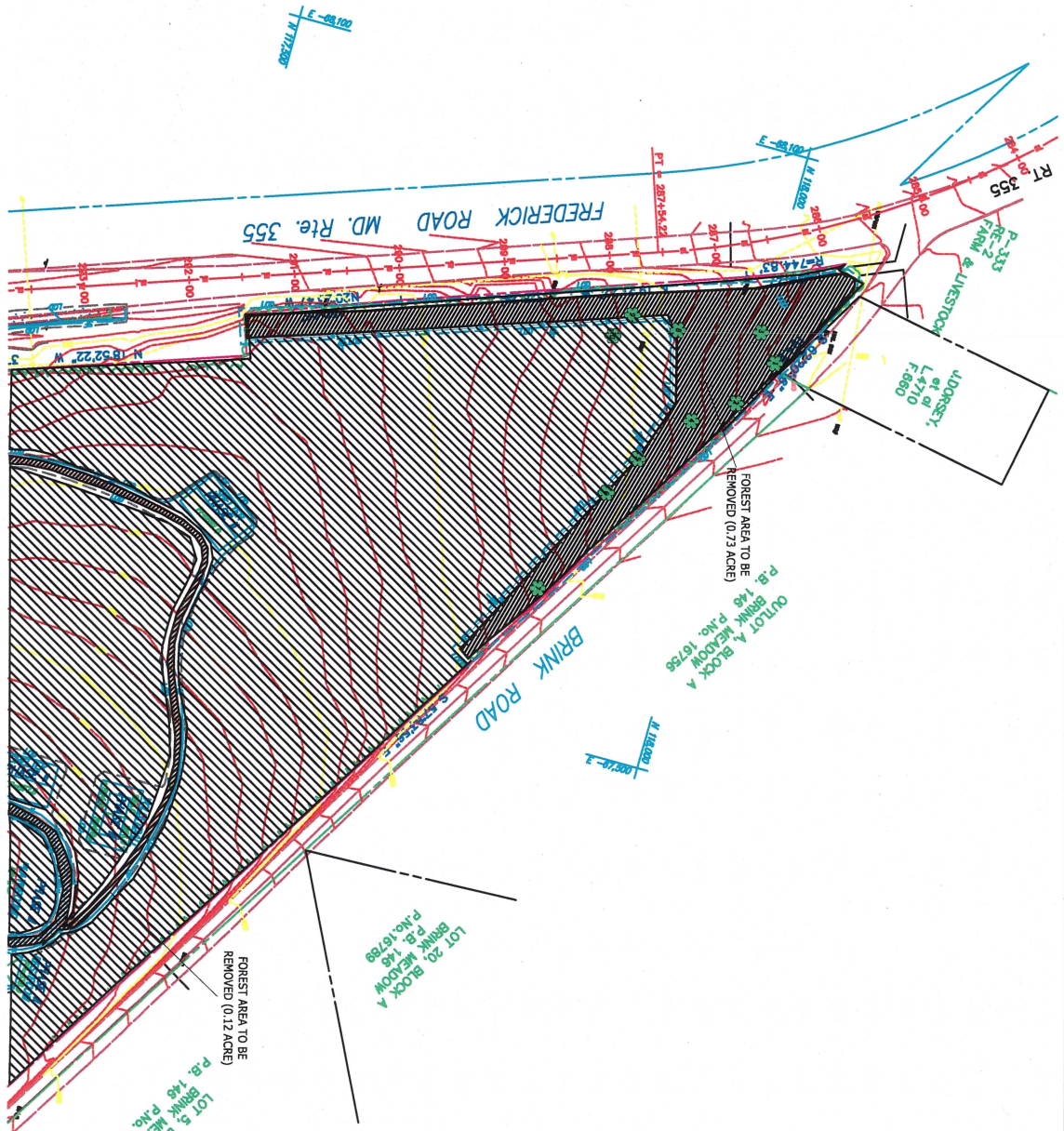
Sincerely,

*Mark Burchick*

Mark Burchick

Enclosures:      Approved Ridge Road NRI/FSD/FCP  
Approved Brink/355 NRI/FSD and Pending FCP  
11/7/02 Planning Board Opinion

CC:  
DD:                Josh Penn, M-NCPPC  
Nooshin Amipour, Artery



\* LOCATIONS FOR RESTROOMS, SHEDS, VOLUNTARY COUNT AND FENCE TANKS WITHIN FOREST RESTORATION AREA WILL BE DETERMINED DURING PHASE I. EXPECT SOME REMOVAL OF TREES WITH IMPROVEMENT FOOTPRINTS WHEN PHASE II IS COMPLETE.

- Legend**
- Existing Outcrops
  - Proposed Outcrops
  - 502.0
  - Existing Elevation
  - Proposed Elevation
  - 500.00
  - Existing Trenches
  - Existing Tree
  - Specimen Tree
  - Critical Root Zone
  - Forest Retention
  - Forest Removal
  - Woodland Conservation Area
  - Signage
  - Tree Protection Fencing
  - Limits of Disturbance
  - Asphalt Paving
  - Private Storm Drain

Mark Burdick Date  
 Qualified Professional as per the  
 1991 Maryland Forest Conservation Act  
 Issued 12/16/1992

NO.	DATE	DESCRIPTION
1	12/16/92	Revisions per MNCPC comments
2	12/16/92	Revisions per MNCPC comments
3	12/16/92	Revisions per MNCPC comments

Parcel	Area	Acres	Notes
6335	4563	277	
6739	8662	614	
8050	12828	652	
7994	8684	676	
8990	14170	679	
9594	2749	159	
13360	1022	60	
10310	1174	66	

**Engineer:**  
 Apex Engineering  
 19897 Cobble Branch Way  
 Suite 200  
 Rockville, MD 20855  
 301-417-0200

**Prepared for:**  
 The Artery Group, LLC  
 7200 Wisconsin Avenue  
 Suite 1000  
 Bethesda, MD 20814  
 301-961-8000

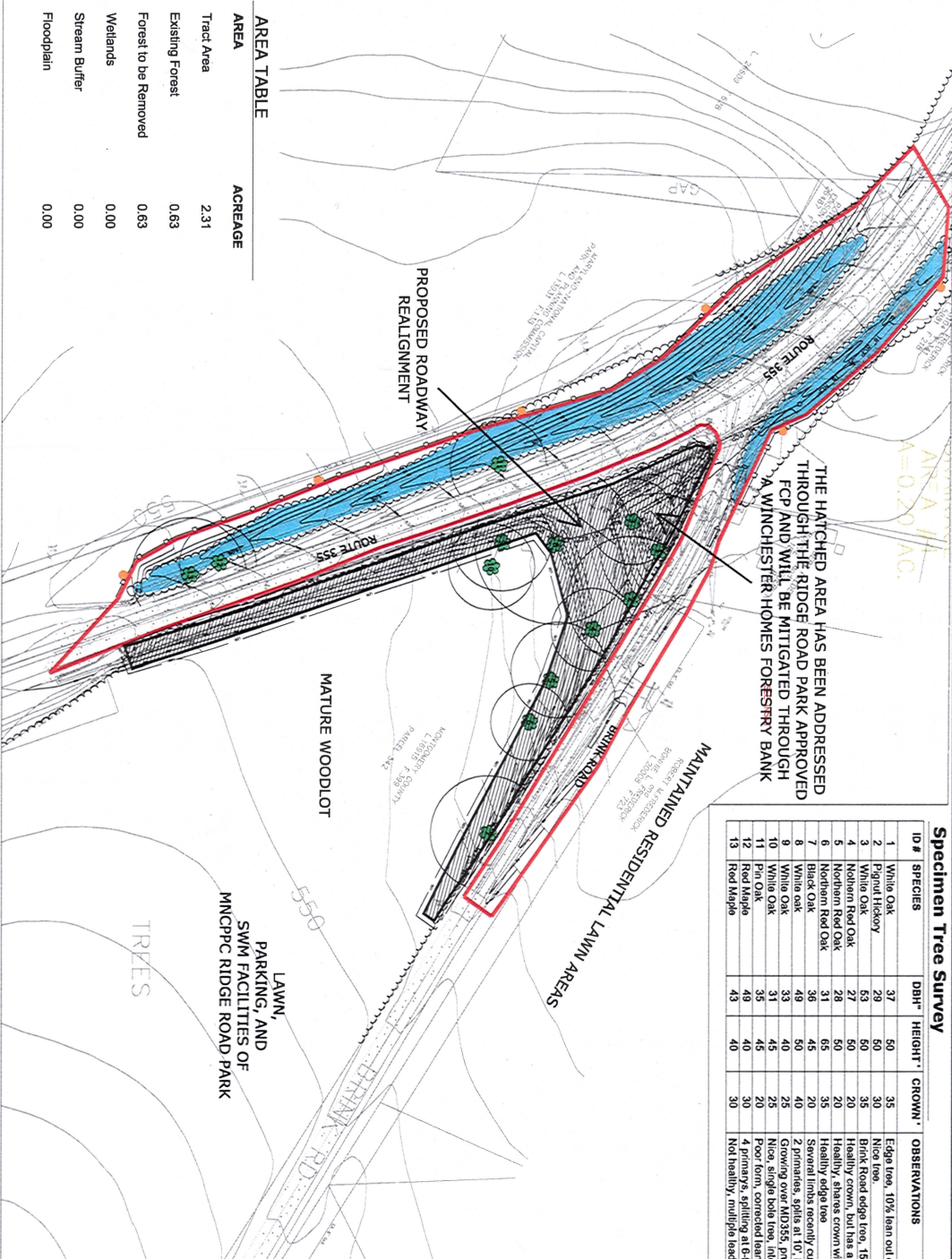
**Prepared by:**  
 Environmental  
 Systems  
 Analysis, Inc.  
 Natural Resource Management  
 Ecological Restoration  
 Annapolis, MD 21401

**MANCPFC RIDGE ROAD PARK**  
 Nonpoint Control Method  
 SCALE: 1"=50'  
 DATE: 6/7/92  
 ESN PROJECT NAME: BR-03300004  
 C:\P\CP\mancpfc\mancpfc  
 SHEET: 2 of 8



### Specimen Tree Survey

ID #	SPECIES	DBH"	HEIGHT'	CROWN'	OBSERVATIONS
1	White Oak	37	50	35	Edge tree, 10% lean out over Brink Road.
2	Pinon Hickory	20	50	30	Minor, found edge tree, 15% lean, sparse crown with #1.
3	White Oak	53	50	35	Healthy crown, but has a cavity at the base.
4	Northern Red Oak	27	50	20	Healthy, sparse crown with #2.
5	Northern Red Oak	28	50	20	Healthy, sparse crown with #2.
6	Northern Red Oak	31	65	35	Several limbs recently cut, hangs out over road.
7	Black Oak	36	45	40	2 primaries, splits at 10', healthy.
8	White Oak	49	50	25	Growing over MD355, pruned for power lines.
9	White Oak	33	45	20	Nice, single bole tree, internal power lines support wires.
10	White Oak	31	45	20	Poor form, corrected lean out over MD 355.
11	Pin Oak	35	45	30	4' primary, splitting at 6' lean, fence runs through middle.
12	Red Maple	30	40	20	Not healthy, multiple baser splitting at 6' feet.
13	Red Maple	43	40	30	



### AREA TABLE

AREA	ACREAGE
Tract Area	2.31
Existing Forest	0.63
Forest to be Removed	0.63
Wetlands	0.00
Stream Buffer	0.00
Floodplain	0.00

Mark Burchick Date

**Qualified Professional** as per the  
1991 Maryland Forest Conservation Act  
Issued 12/16/1992

NO.	REV.	DATE	REVISION

**Engineer:**  
Aep Engineering  
15850 Carols Branch Way  
Suite 200  
Rockville, MD 20855  
301-417-0500

**Prepared for:**  
The Arney Group, LLC  
7220 Wisconsin Avenue  
Suite 1000  
Bethesda, MD 20814  
301-961-5800

**Prepared by:**  
Environmental  
Systems, Inc.  
Ecological Restoration  
14747 Lee Street  
Annapolis, MD 21401

**FOREST CONSERVATION PLAN**

**BRINK ROAD/MD355**  
**ROADWAY IMPROVEMENTS**

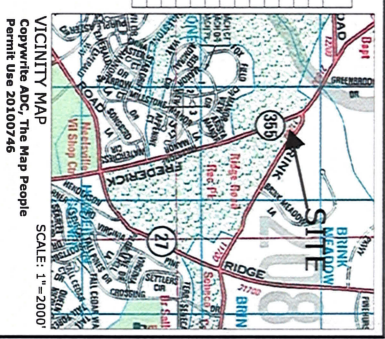
Montgomery County, Maryland  
Department of Planning and Public Works

DATE: 1.14.09 Revised 12.1.09  
ES&S PROJECT NAME: BR 09/08/Brink Rd & MD355  
Revised/Improvements/FCP

SCALE: 1"=100'  
SHEET: 1 of 3

### Legend

- Limit of Disturbance for Road Improvements
- Limit of Disturbance for Ridge Road Park FCP Approval Date 11.12.09
- Existing Topography
- Tree Line
- Specimen Tree
- Critical Root Zone
- Trees to be Removed from Road Shoulder (0.63 Acre)
- Trees to be removed on Park Property
- Woodland Conservation Area Signage
- Tree Protection Fencing





THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**Date Filed: November 7, 2002**

**Action: Approved Staff Recommendation**

**Motion of Comm. Wellington, seconded by  
Comm. Robinson with a vote of 3-0;**

**Comms Berlage, Robinson, and  
Wellington voting in favor with  
Comms. Bryant absent and Perdue  
temporarily absent**

NOV 12 2002

## MONTGOMERY COUNTY PLANNING BOARD

### OPINION

Preliminary Plan 1-02033A

NAME OF PLAN: GREENWAY VILLAGE AT CLARKSBURG

On 09/20/2002, CLARKSBURG SKYLARK, L.L.C. submitted an amendment to the previously approved preliminary plan application in the PD-4 zone. The previous application proposed to create 1330 units (600 single family detached, 386 single family attached, 344 multi-family units and 89,000 square feet of retail) on 374.08 acres of land. The application was designated Preliminary Plan 1-02033A. On 10/10/02, Preliminary Plan 1-02033A was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-02033A to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-02033A.

Approval of Preliminary Plan, Pursuant to the FY 2002 Annual Growth Policy for Ceiling Flexibility for Developer Participation Projects, and Including a Preliminary Water Quality Plan, and Waiver of Street Frontage Pursuant to Section 50-29(a)(2), and Waiver of Minimum Radii Pursuant to Section 50-26(f), Subject to the Following Conditions:

- 1) Compliance with the conditions of approval of the January 31, 2002, Transportation Planning memorandum which includes the following conditions:
  - I. Total development under this preliminary plan application is limited to the following uses and density:
    - 1,330 dwelling units
    - 89,000 square feet of retail space
    - 2,000 square feet of community space
  - II. To satisfy Policy Area Transportation Review (PATR)
    - a. The applicant shall participate in widening MD 27; (1) to six through travel lanes from Observation Drive in Germantown through the Brink Road intersection, (2) to six through travel lanes through the A-305 intersection; and including dedication of 120' right-of-way, 60' from the centerline, along the site frontage.

This improvement along MD 27 is consistent with the master plan recommendation. If, after master dedication along the west side of MD 27, sufficient right-of-way is not available for the proposed widening, the applicant has to either acquire additional right-of-way on the east side of MD 27 or dedicate additional right-of-way and widen MD 27 on their development side.

- b. The applicant shall dedicate on-site portions and participate in construction Relocated Newcut Road (A-302) as a two lane divided arterial or business district roadway between MD 27 and the A-305 intersection and as a four lane divided arterial roadway between A-305 and MD 355.
- c. The applicant shall participate in constructing A-305 as a four lane divided arterial roadway between MD 27 and Stringtown Road.
- d. The applicant shall dedicate and participate in constructing Foreman Boulevard as a two lane arterial roadway from its current terminus at Timber Creek Lane to A-305.

III. To satisfy Local Area Transportation Review (LATR)

- a. The applicant shall participate in construction a second left-turn lane from northbound MD 355 to westbound MD 27.
- b. The applicant shall participate in constructing additional turn/approach on MD 27 and Brink Road at the intersection of MD 27/Brink Road.
- c. The applicant shall participate in providing a separate left-turn lane from southbound MD 355 to eastbound Brink Road as a separate left-turn lane from westbound Brink Road to southbound MD 355.
- d. The applicant shall widen existing Skylark Road by four to six feet, for a total roadway width of 24 feet, from Piedmont Road to the Greenway and construct Relocate Skylark Road from the Greenway to MD 27, including a five-foot sidewalk on the south side.

IV

The applicant shall agree that the roadway improvement listed as conditions of approval are under construction in accordance with the phasing of road improvements for Clarksburg/DiMaio development as described in David D. Berward Rafferty's letter dated August 05, 2002 and confirmed in Transportation Planning's letter date August 22, 2002. The locations of the above roadway improvements (except for condition 3d\_ are shown in the attached Exhibit 1.

- V. The applicant shall construct a roundabout on A-302 at Street "P3-Q".
- VI. The applicant shall construct A-302 as a business district street between A-305 and the roundabout in accordance with DPWT Standard No. MC-219.02, and as a two lane arterial street between the roundabout and MD 27 in accordance with DPWT Standard No. MC-213.04."
- VII. The issuance of building permits is predicated on the applicant participating with Preliminary Plan No. 1-01030 Clarksburg Village. The total number of building permits that may be granted for the combined projects shall be limited as follows:
  - a) MD27-Observation Drive to MD 355 plus turn lane on MD 355 to westbound MD 27- 700 Dwelling units

- b) MD 27- MD 355 to Brink Road plus turn at MD 27/Brink Road – 700 Dwelling units
- c) MD 27-Brink Road to A-305 plus turn Lanes at MD 355/Brink – 600 dwelling units

On-Site Improvements

- a) -305: Stringtown Road to Forman Boulevard, Forman Boulevard: MD 355 to A-305 - 500 Dwelling units
  - b) A-305: Forman Boulevard to A-302
  - c) A-302: MD 27 to A-305 - 500 Dwelling units
  - d) A-305: MD 27to A-302 - 500 Dwelling units
  - e) A-302: A-305 to MD 355 - Remaining Residential/Retail/Commercial
- 2) Prior to Planning Board review of a Site Plan applicant shall submit an “Infrastructure Plan” for Planning Board review. The plan shall include the following:
    - a. Location and types of stormwater management facilities for quality and quantity controls that comply with the conditions of MCDPS’ preliminary water quality plan
    - b. Delineate bike and pedestrian access pathways including all at grade and below grade crossings along all road rights of way and at stream crossings
    - c. All roadway networks including both private and public connections, streetscape, lighting, sidewalks and paving materials
    - d. Delineation of “Greenway” and other open space areas including all environmental buffers
    - e. School sites and Park dedication sites
    - f. Recreation guideline concept plan
    - g. Proposed schedule for clearing and grading of site
  - 3) No clearing, grading, unless designated on the “Infrastructure Plan” and no recording of plats prior to site plan enforcement agreement approval
  - 4) Compliance with the conditions of the Revised Preliminary Water Quality Plan approval letter, dated, January 30, 2002, from the Montgomery County Department of Permitting Service
  - 5) Compliance with the conditions of the Preliminary Forest Conservation Plan. Conditions must be satisfied prior to recordation of plat(s) or MCDPS issuance of sediment and erosion control permits
  - 6) Access and improvement as outlined in MCDPWT letter dated January 31, 2002
  - 7) Access and improvements as outlined in MDSHA letter dated, November 6, 2001
  - 8) All road rights-of-way shown on the approved preliminary plan shall be dedicated, by the applicant, to the full width mandated by the Clarksburg Master Plan unless otherwise designated on the preliminary plan
  - 9) All road right-of ways shown on the approved preliminary plan shall be constructed, by the applicant, to the full width mandated by the Clarksburg Master Plan, and to the design standards imposed by all applicable road codes or as approved by MCDPWT
  - 10) Abandonment of unused portion of Skylark Road to be approved, by appropriate agency, subsequent to construction and release of relocated Skylark Road to Montgomery County
  - 11) Record plat to show delineation of a Category I conservation easement over the area of stream valley buffer and forest conservation

- 12) Record plat to provide for dedication of local road network as outlined in conditions #1, #6 and #7 above and depicted on the approved preliminary plan
- 13) Record plat to reflect common ingress/egress easements over all shared access locations
- 14) Record plat to reflect note limiting uses of dedicated school site to school construction or park use only
- 15) Prior to record plat, dedication to M-NCPPC, the following areas as outlined in January 31, 2002 Park Planning and Resource Analysis Unit memo:
  - Area identified as "Park 6" as shown on plan, to be an area with a minimum 600 ft. width with adequate area outside of stream buffer to accommodate the needed Greenway trails
  - Land north of relocated Skylark Road and Street P3-A adjacent to Ovid Hazen Wells. Not to include stormwater ponds of swimming pool facility areas.
  - Areas identified "Park 1" and "Park 9" and "Park 12" as shown on plan
- 16) Construction of two (2) full size baseball fields, one (1) full size basketball court, one (1) multi-age playground and an adequately sized parking lot by applicant within "park 12". Facilities to be constructed to park standards and layout to be coordinated with M-NCPPC staff at Site Plan. It is noted that this park is part of a pending application for the Clarksburg/Skylark Development District
- 17) Dedication of the proposed Middle School site west of Ridge Rd. (MD 27) to Montgomery County Public Schools
- 18) The school site will be graded, surfaced with topsoil, fine graded to a maximum of +/- 6" over 100', and seeded as appropriate in accordance with Montgomery County Public School standards
- 19) Phasing of dedication of the school site and park sites shall be incorporated as part of the phasing schedule included with Site Plan approval
- 20) Applicant to construct eight (8) foot wide master plan paved, mixed use trail within the Clarksburg Greenway as approved by the Site Plan
- 21) Final approval of the number and location of buildings, including location of multi-family dwelling units and design of commercial center to be determined at Site Plan
- 22) Final alignment, design and landscaping of trails, greenway trails and entrance features to be determined at Site Plan
- 23) A landscape and lighting plan must be submitted as part of the site plan application for review and approval by technical staff
- 24) Final number of MPDU's to be determined at the time of site plan dependent on Condition # 20 above
- 25) Waiver of over length cul-de-sac and appropriate sidewalk waivers to be reviewed and approved at Site Plan
- 26) This preliminary plan will remain valid until February 7, 2014 and shall be phased for recordation of lots as follows:
  1. Phase One: 350 lots by February 7, 2005
  2. Phase Two: 700 lots by February 7, 2008
  3. Phase Three: 1050 lots by February 7, 2011
  4. Phase Four: All remaining lots by February 7, 2014

Prior to the expiration period, the final record plat for all remaining lots within each phase must be recorded, or a request for an extension must be filed
- 27) Other necessary easements



August 22, 2002

Mr. David D. Flanagan  
Elm Street Development  
6820 Elm Street, Suite 200  
McLean, Virginia 22101

Mr. Bernard Rafferty  
Artery Development Company  
7200 Wisconsin Avenue, Suite 1000  
Bethesda, Maryland 20814

RE: Phasing of Road Improvements for  
Clarksburg Village/DiMaio Developments

Dear Mr. Flanagan and Mr. Rafferty:

We are writing in reply to Mr. Rafferty's letter of August 5, 2002, confirming the proposed modifications of phasing of road improvements for the Clarksburg Village/DiMaio developments. The recommended modified phasing program is as follows:

<u>Off-Site Improvements</u>	<u>Permit Capacity</u>
1. MD 27-Observation Drive to MD 355 plus turn lane on MD 355 to WB 27	700 Units
2. MD 27-MD 355 to Brink plus turn at MD 27/Brink	700 Units
3. MD 27-Brink to A-305 plus turn lanes at MD 355/Brink	600 Units

## On-Site Improvements

- |   |   |
|---|---|
| A. A-305: Stringtown to Foreman<br>Foreman: MD 355 to A-305 | 500 Units   |
| B. A-305: Foreman to A-302<br>A-302: MD 27 to A-305         | 500 Units   |
| C. A-305: MD 27 to A-302                                    | 500 Units   |
| D. A-302: A-305 to MD 355                                   | Remaining Residential<br>(approx. 300 units) and<br>all retail and commercial |

We generally support the revised phasing of road improvements as described in Mr. Rafferty's August 5 letter with the following comments:

1. The amendment to the approved preliminary plans as related to the proposed new phasing of road improvements will be reviewed by the Planning Board at the time of the first site plan review. We may revisit the phasing plan in the future depending on the sequence of the submitted site plans.
2. The first off-site improvements should be (1) MD 27 from Observation Drive to MD 355 plus turn lane on northbound MD 355 to westbound MD 27 and (2) MD 27 from MD 355 to Brink Road plus turn lanes at MD 27 and Brink Road, since these improvements would be critical elements in creating regional staging ceiling capacity. Off-site improvement #1 must be physically under construction (not merely bonded) before any building permits are released related to off-site improvement #2.
3. We recommend that the on-site improvement, A-305 from Stringtown Road to Foreman Boulevard and Foreman Boulevard from MD 355 to A-305, identified as "A" in Mr. Rafferty's letter, be constructed as the first on-site improvement. This on-site improvement should be constructed prior to the on-site improvement "B", A-305 from Foreman Boulevard to A-302 and A-302 from MD 27 to A-305.
4. After the first off-site and on-site improvements are constructed as described above, the remaining off-site and on-site improvements could proceed in any sequence until all improvements are completed.

Should you have any questions or need any clarification on our comments, please call either Ki Kim or me at (301) 495-4525.

Sincerely,



Ronald C. Welke, Supervisor  
Transportation Planning

RCW:KHK:cmd

cc: Wynn Witthans  
Malcolm Shaneman

Ltr to Flanagan and Rafferty re Road Phasing.doc





DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Robert G. Hoyt  
Director

January 11, 2010

Royce Hanson, Chairman  
Montgomery County Planning Board  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Brink Road and MD 355, MR2009802, NRI/FSD applied for on 2/13/2008  
3<sup>rd</sup> District Police Station, MR2009742, NRI/FSD originally applied for on 9/29/2004 and  
recertification applied for on 2/5/2009

Dear Dr. Hanson:

As stated in a letter to you from Bob Hoyt, dated October 27, 2009, the County Attorney's Office has advised me that the new provisions of the Forest Conservation Act do not apply to any application required by Chapter 22A of the Montgomery County Code submitted before October 1, 2009. Since the applications for the above referenced requests were submitted before this date, I will not provide a recommendation pertaining to these requests for variances.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,

Laura Miller  
County Arborist

cc: Robert Hoyt, Director  
Walter Wilson, Associate County Attorney  
Mark Pfefferle, Acting Chief